

REPRESENTATIVES FOR PETITIONER:

Sammy R. Davis, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Linda Phillips, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sammy R. Davis,)	Petition Nos.: 79-004-09-3-4-00009
)	79-004-10-3-4-00001
Petitioner,)	79-004-11-3-4-00001
)	
v.)	Parcel No.: 79-07-29-301-004.000-004
)	
Tippecanoe County Assessor,)	County: Tippecanoe County
)	Township: Fairfield
Respondent.)	
)	Assessment Years: 2009, 2010 & 2011

Appeal from the Final Determination of the
Tippecanoe County Property Tax Assessment Board of Appeals

May 14, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

ISSUE

1. Sammy R. Davis lived at the subject property for more than three years while he rebuilt another home that he had vacated after a fire but that he continued to list as his residence for various purposes. He claimed a homestead deduction only for the subject property

during that time. Under those circumstances, was the subject property his principal place of residence for purposes of the statute governing homestead deductions?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The subject property is located at 1018 Warehouse Street in Lafayette. *Davis testimony.*
3. On November 19, 2012, Sammy Davis filed three Form 133 Petitions for Correction of an Error. In each case, he left blank the portion of the petition that calls for a taxpayer to describe the error he is seeking to correct, other than to write, “See page 3 for explanation.” In none of the appeals, however, did page three of the petition contain any explanation from Davis. Nonetheless, on January 25, 2013, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Davis relief, stating, “Petitioner did not appear and provided no evidence of eligibility for homestead deduction, so the request is denied.” *Bd. Ex. A.*
4. Davis then filed the Form 133 petitions with the Board, claiming that there was a disagreement about whether he lived at the subject property.
5. On February 20, 2014, the Board’s designated administrative law judge, Dalene McMillen, held a hearing on Davis’s petitions. Neither she nor the Board inspected the property.
6. Davis, Tippecanoe County Assessor Linda Phillips, Dawn Fay (chief deputy for the Tippecanoe County Auditor), and Patricia Garriott (the Auditor’s property record manager) were sworn as witnesses.¹
7. Davis did not submit any exhibits.

¹ Ms. Garriott did not testify.

8. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Copy of Ind. Code § 6-1.1-12-37(j),
- Respondent Exhibit 2: Copies of Ind. Code § 3-5-5-1 through -4,
- Respondent Exhibit 3: Affidavit of Jared Bond, Co-Director of the Tippecanoe County Board of Elections and Registration, dated November 19, 2013, and a voter registration for Sammy R. Davis, dated March 13, 2008,
- Respondent Exhibit 4: Copy of Ind. Code § 9-24-1-1.5,
- Respondent Exhibit 5: Indiana Driver Record for Sammy R. Davis.

9. The following additional items are also recognized as part of the record of proceedings:

- Board Exhibit A – Form 133 petitions,
- Board Exhibit B – Hearing notices,
- Board Exhibit C – Hearing sign-in sheets.

SUMMARY OF DAVIS’S CASE

10. In early 2008, Davis lived at 5243 North Ninth Street in West Lafayette (“Ninth Street home”). A fire substantially damaged the house eight or nine months later, so he “moved in the side” of the subject property, which he referred to as his “apartment house.” *Davis testimony.*

11. Davis stayed at the Ninth Street home for a “couple of days” while he was rebuilding it. . . . And he continued to have his mail delivered there. But then he lived at the subject property until June or July of 2012, when he finished rebuilding the Ninth Street home. As the Assessor’s witness acknowledged, Davis did not claim a homestead standard deduction for the Ninth Street home for any of the years at issue in this appeal. *Davis testimony; Fay testimony.*

SUMMARY OF THE ASSESSOR’S CASE

12. Under Ind. Code §6-1.1-12-37, an auditor may require a taxpayer to provide evidence, such as a state income tax return, a valid driver’s license, or a valid voter registration, to show that the residence for which he claims a homestead deduction is his principal place of residence. *Fay testimony; Resp’t Ex. 1.*

13. To show that Davis resided at the Ninth Street home, rather than at the subject property, the Assessor submitted Davis's voter registration and his driver record. In registering to vote, a person may establish his residence by "intent and conduct taken to implement the intent." *See* Ind. Code § 3-5-5-2. On March 11, 2008, Davis applied for his voter registration. He certified that he lived at the Ninth Street home. Jared Bond, the Co-Director of the Tippecanoe County Board of Elections and Registration, confirmed that as of November 19, 2013, Davis's voter registration had not changed. *Fay testimony; Resp't Exs. 2-3.*
14. Similarly, Ind. Code § 9-24-1-1.5 provides that a person applying for a driver's license is held to the same standard for establishing residency outlined in Ind. Code § 3-5-5. Davis's driver record shows that he resided at the Ninth Street home since September 6, 2006. According to that record, Davis has not listed the subject property as his address since January 31, 2000. Davis confirmed that his driver's license listed the Ninth Street home as his address. *Fay testimony; Davis testimony; Resp't Exs. 4-5.*

ANALYSIS

15. It is unclear precisely what Davis is claiming he was denied. As explained above, he did not initially identify an error in his Form 133 petitions. Nonetheless, the PTABOA apparently understood Davis to be claiming that he was erroneously denied a homestead deduction for the subject property. And in the portion of the Form 133 petitions calling for a taxpayer to give his reasons for appealing to the Board, Davis pointed to his disagreement with what he viewed as the PTABOA's conclusion that he did not live at the subject property during the years in question. Under those circumstances, the Board treats the Form 133 petitions as appealing the denial of the standard deduction—also

often called the “homestead deduction” or “homestead standard deduction”—provided by Ind. Code § 6-1.1-12-37.²

16. That statute provides a deduction in specified amounts for homesteads, which it defines as follows:

(a) The following definitions apply throughout this section:

(1) “Dwelling” means any of the following:

(A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.

....

(2) “Homestead” means an individual's *principal place of residence*:

(A) that is located in Indiana;

(B) that: (i) the individual owns; [or] (ii) the individual is buying under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence . . . ; and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

....

(j) A county auditor may require an individual to provide evidence proving that the individual's residence is the individual's principal place of residence The county auditor may limit the evidence that an individual is required to submit to a state income tax return, a valid driver's license, or a valid voter registration card showing that the residence for which the deduction is claimed is the individual's principal place of residence.

I.C. § 6-1.1-12-37 (2013 supp.) (emphasis added).

17. Although Ind. Code § 6-1.1-12-37 does not define “principal place of residence,” the Department of Local Government Finance (“DLGF”) defines that term as “an

² The Assessor does not argue that the correction of error process under Ind. Code § 6-1.1-15-12 was inappropriate for the claims that Davis raises. Nor did the PTABOA make such a finding in its determinations. The Board therefore assumes, without deciding, that Davis's claims are available on a Form 133 petition.

individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." 50 IAC 24-2-5.

18. The Board therefore must decide how the DLGF's definition of a taxpayer's principal place of residence applies to the unique facts presented in these appeals. Davis moved to the subject property in early 2008 after a fire damaged his Ninth Street home. He stayed at the subject property far more often than he stayed at the Ninth Street home during the long rebuilding process. While Davis may have planned to make the Ninth Street home his permanent, fixed residence at some point, the subject property was his residence for the foreseeable future. It was to that property that he planned to return after any trips or after working on the Ninth Street home, even though he might have occasionally spent the night at the Ninth Street home.
19. In that sense, these appeals are analogous to the common scenario where a taxpayer is building a new home but continues to reside at his existing home until the new home is completed. In such a case, it is doubtful that anyone would contest the taxpayer's right to claim a homestead exemption on his existing home until he actually moves into the new home.
20. The Board therefore finds that the subject property was Davis's principal place of residence for the 2009 through 2011 assessment dates. In reaching its conclusion, the Board recognizes that Davis's driver's license and voter registration³ listed his residence as the Ninth Street home and that he continued to have mail delivered there. Indeed, the Assessor pointed to Ind. Code § 6-1.1-12-37(j), which allows an auditor to limit the evidence that a taxpayer is required to produce to a state income tax return, a valid driver's license, or a valid voter registration card. But the statute does not prohibit the auditor or the Board from considering other evidence in determining a taxpayer's

³ The record is silent about whether Davis actually voted during the years at issue.

principal place of residence.⁴ Here, Davis persuasively testified that he intended to and did live at the subject property for more than three years while he rebuilt the Ninth Street home. And the undisputed evidence that he did not claim a deduction for the Ninth Street home during that period bolsters his testimony.

21. This case is therefore distinguishable from *Kellam v. Fountain County Assessor*, 999 N.E.2d 120 (Ind. Tax Ct. 2013). In that case, Kellam claimed a homestead deduction for a Fountain County property that he co-owned with Carol Myers and that he was renovating. *Kellam v. Fountain County Assessor*, 999 N.E.2d 120, 121 (Ind. Tax Ct. 2013). While working on the house, he stayed next door with Myers’s parents. *Id.* Kellam and Myers both signed the homestead deduction application, and both were receiving homestead deductions on other properties at that time. *Id.* The Board had denied Kellam’s claim on grounds that both he and Myers owned other properties for which they received homestead deductions. *Id. at 122-23.* The Tax court, however, found that Kellam had successfully removed the homestead deduction on his other property and that he was therefore entitled to the deduction on the Fountain County property. *Id. at 124.*
22. It appeared to the Tax Court, however, that the Board had also concluded that the Fountain County property was not Kellam’s principal place of residence because he was not physically residing there. The court disagreed, explaining that the legal standard for determining a taxpayer’s principal place of residence is “the ‘intention’ to return to the property after an absence, not continuous physical presence at the property.” *Id. (citing 50 IAC 24-2-5).* In that regard, the court pointed to Kellam’s testimony that he alone intended to seek a homestead deduction for the Fountain County property. *Id.* The court also noted that Kellam had used the property as his mailing address, as the location of his

⁴ The language allowing an auditor to limit the evidence that a taxpayer is required to produce was added by P.L. 137-2012 § 17 and did not become effective until July 1, 2012—after the assessment dates at issue in these appeals. Given its finding that the language does not limit the evidence that the Board or auditor may consider, the Board need not decide whether the language applies to Davis’s appeals.

voter registration, and as the address on his driver's license, tax returns, and bank statements. *Id.*

23. Nothing in *Kellam* compels a finding that the Ninth Street home—rather than the subject property—was Davis's principal place of residence. Granted, both Kellam and Davis received mail at the properties that they were rebuilding or renovating and used those properties as their addresses for various purposes, such as receiving mail and registering to vote. Unlike Kellam, however, Davis did not intend to claim a homestead deduction for the property that he was rebuilding until after he finished the project. Also unlike Kellam, who lived with Myers's parents temporarily while he renovated the Fountain County property, Davis lived for more than three years in another house that he owned and for which he sought a homestead deduction.
24. The fact that Davis used the subject property as his primary residence, however, does not end the Board's inquiry. Davis referred to the property as his "apartment house," and he testified that he moved into its "side." *Davis testimony*. Thus, it is unclear whether he occupied the entire property or whether he rented a portion of it to tenants. Davis is only entitled to a deduction for the portion of the property that he used as his principal place of residence and not for any portion of the property that he leased to others during the years at issue.

SUMMARY OF FINAL DETERMINATION

25. The Board finds in Davis's favor and orders that the homestead standard deduction under Ind. Code § 6-1.1-12-37 be applied to the portion of the subject property that Davis occupied for the 2009 – 2011 assessment years.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.